

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

* * * * *

ROBERT LEE DEFOY,	*
Petitioner	* C.A. No.
vs.	* 00-110 ERIE
Superintendent JOHN M.	* District Judge
MCCULLOUGH, Att.	* McLaughlin
General D. MICHAEL	*
FISHER, PENNSYLVANIA	* Magistrate
BOARD OF PROBATION AND	* Judge Baxter
PAROLE,	*
Respondents	*

* * * * *

DEPOSITION OF
FREDERICK L. CUTLER
AUGUST 18, 2006

COPY

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DEPOSITION

OF

FREDERICK L. CUTLER, taken on behalf
of the Petitioner herein, pursuant to
the Rules of Civil Procedure, taken
before me, the undersigned, Lori A.
Behe, a Court Reporter and Notary
Public in and for the Commonwealth of
Pennsylvania, at the Keystone
Building, Office of Attorney General,
444 East College Avenue, Suite 440,
State College, Pennsylvania on
Wednesday, August 16, 2006 beginning
at 12:34 p.m.

A P P E A R A N C E S

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I N D E X

WITNESS: FREDERICK L. CUTLER

EXAMINATION

by Attorney Patton

7 - 49

CERTIFICATE

50

EXHIBIT PAGE

1			
2			
3			<u>PAGE</u>
4	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
5	Petitioner's		
6	A	Summarization Report	17
7	B	Parole Decision Making	
8		Guidelines	24
9	C	April 10, 1997 Letter,	
10		Re-parole Violent	
11		Offender	27
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

OBJECTION PAGE

ATTORNEY

PAGE

Bradley

31

P R O C E E D I N G S

FREDERICK L. CUTLER, HAVING FIRST
BEEN DULY SWORN, TESTIFIED AS
FOLLOWS:

EXAMINATION

BY ATTORNEY PATTON:

Q. Sir, could you tell us your
name, please?

A. Frederick L. Cutler,
C-U-T-L-E-R.

Q. Mr. Cutler, are you currently
employed?

A. Yes, sir.

Q. Where do you work?

A. I'm employed by the
Pennsylvania Board of Probation and
Parole at the Altoona Institutional
Unit as a parole agent II. I'm
sorry.

Q. How long have you worked for
the Board?

A. A little over 15 years, sir.

Q. Has all that time been spent

1 as institutional parole agent?

2 A. Correct.

3 Q. So is it accurate to say that
4 some parole agents are field agents
5 that work outside of the
6 institutions?

7 A. The majority are, sir.

8 Q. But you are a parole agent
9 that's assigned to a particular
10 correctional institution and you work
11 there?

12 A. No, sir. I'm with the Altoona
13 Institutional Unit. I serve as ten-
14 county prisons and the Johnstown
15 Community Correction Center out of
16 the Altoona District office, sir.

17 Q. In any of your time with the
18 Board were you ever assigned to any
19 state correctional institutions?

20 A. Yes, sir. I was first
21 assigned SCI Huntington. And then
22 transferred to SCI Houtzdale.

23 Q. Okay. About how long were you
24 at Houtzdale?

25 A. Approximately 18 months,

1 something like ---

2 Q. No, I understand.

3 A. --- approximately 18 months,
4 sir.

5 Q. Could you just give me first
6 just like kind of a general
7 description of what your duties were
8 as the institutional parole agent
9 assigned to a particular state
10 correctional institution?

11 A. Sure. I did orientation for
12 new inmates. I did parole education
13 classes for people who were coming
14 within eight or nine months of their
15 minimum dates. Submitted parole
16 plans for pre-parole investigations
17 on behalf of the inmates at the
18 institution. Prepared summarization
19 reports for the Parole Board, both
20 minimum, review, re-parole review,
21 such items of that nature. And I
22 also signed people out. In other
23 words, released them to the streets.

24 Q. Okay. With regard to, you
25 mentioned parole plans, could you

1 explain what a parole plan is?

2 A. A parole plan is properly
3 called the pre-parole investigation.
4 We take information that's available
5 from the file, so the offender, his
6 name, details of the offense, social
7 history and whatever we have
8 available to us and we submit it to
9 the field office for investigation.
10 In other words the inmate or offender
11 gets a residency offering from his
12 mother, wife, girlfriend, father,
13 whoever it might be, and we submit
14 that to the most local field office
15 for an investigation. The agent goes
16 to the home and makes sure that it's
17 adequate and suitable for the needs
18 of the offender. And they either
19 approve or reject that.

20 Q. During your time as an
21 institutional parole agent, with
22 regard to the parole plan, were there
23 certain instances under which you
24 were not required to actually have to
25 send a plan out to a field office for

1 investigation?

2 A. The only time that we don't
3 submit a pre-parole investigation is
4 if the person has a state detainer
5 sent. In other words, if he's going
6 to reenter to a new number, change
7 from like say for instance GH1450 to
8 whatever the new number might be, the
9 only time we probably would not
10 submit a parole plan is if we had a
11 green sheet that said refused at that
12 time, and maybe review eight months
13 or whatever down the road, there
14 would be no point in submitting that
15 parole plan out because that's for
16 that possible release.

17 Q. Okay. But if a person is in
18 as a convicted parole violator who
19 has another sentence that they are
20 going to have to serve once they ---

21 A. Correct.

22 Q. --- get released you would
23 sometimes not necessarily send a
24 parole plan out for everybody?

25 A. Yeah. We're supposed to get

1 an address as to where he might wish
2 to live and put that on that release
3 order in case something happened to
4 the detainer sent. So that way we
5 could call the field office, notify
6 the field office that so and so is
7 being released to his --- he's been
8 re-paroled and he would be going ---
9 he's coming. By the way what do you
10 want us to tell him to do when he
11 gets there? That's the only time we
12 wouldn't submit a plan. Does that
13 make any sense?

14 Q. Yes.

15 A. Okay.

16 Q. If I could Mr. Cutler, ask you
17 to not start answering the question
18 until I finish.

19 A. I'm sorry. I'm very sorry.

20 Q. No, that's okay. It's just
21 that the court reporter can't get
22 down if both of us are talking at the
23 same time. Okay.

24 A. I apologize.

25 Q. That's not a problem.

1 ATTORNEY BRADLEY:

2 If you could just slow
3 yourself down.

4 BY ATTORNEY PATTON:

5 Q. It's no problem with the
6 answers you're giving, just it makes
7 it easier to get everything down if
8 we're not speaking at the same time.

9 A. I'm sorry.

10 Q. You had mentioned that part of
11 your duties as the institutional
12 parole agent was doing summarization
13 reports?

14 A. Correct.

15 Q. Can you give a little
16 explanation of what summarization
17 reports are?

18 A. Summarization reports include
19 information on the sentence, in a
20 summary form, summary format.
21 Information on the sentence, the
22 offense, the offender's current age,
23 the details of the offense, social
24 history, prior criminal record, any
25 medical problems, a summary of their

1 adjustment at the facility, either
2 --- not only that facility or some
3 other facility he or she might have
4 been at. It includes information on
5 the pre-parole.

6 Q. Okay. Could you explain to me
7 what you would do as an institutional
8 parole agent if you got a notice that
9 a particular inmate was on the list
10 to be seen by the Parole Board for
11 consideration for parole or
12 re-parole, what duties you would have
13 to get that inmate and his file
14 prepared to be seen by the Board?

15 A. We have to have an official
16 version, a criminal history of
17 Pennsylvania State Police rap sheet
18 criminal history, possibly a
19 pre-sentence investigation from the
20 committing county, a copy of the
21 sentence status summary sheet from
22 the Department of Corrections, we
23 would have to have, depending upon
24 the nature of the offense, a mental
25 health evaluation, if it was an

1 assaultive offense. Any information
2 on a pre-parole investigation. And a
3 Department of Corrections
4 recommendation which is called the
5 --- it's called the reclassification
6 summary, it's a DC13.

7 Q. Do you write the summarization
8 report to kind of summarize the
9 information that's contained in all
10 those various documents?

11 A. Correct.

12 Q. So that that summarization
13 report is then submitted to either
14 the hearing examiner or the Board
15 members that do the interview?

16 A. Correct.

17 Q. Do you also fill out the
18 parole decision making guidelines up
19 through the scoring process on the
20 guidelines?

21 A. Correct. Those guidelines
22 have recently changed a few years
23 ago. I don't recall the exact date
24 that they changed the format, so I'm
25 not --- but yes, I do fill the

1 guidelines out.

2 Q. Okay. And as I understand you
3 fill the guidelines out to the point
4 where you get the numerical score as
5 to whether or not the guidelines
6 either recommend or do not recommend
7 release?

8 A. Correct.

9 Q. As part of the summarization
10 report do you as the institutional
11 parole agent make a recommendation as
12 to whether or not you believe the
13 inmate should be paroled or
14 re-paroled or not?

15 A. Thirteen (13) years ago --- 13
16 to 14 years ago we did make a
17 recommendation, 12 to 13 years ago.
18 And then the Board went to a --- they
19 want us to make alternatives, if
20 paroled he should do this, or she
21 should do this, if not paroled we
22 should have this. And then sometime
23 after that we went to just giving
24 them the report, making no
25 recommendation at all, sir.

1 (Petitioner's Exhibit A
2 marked for
3 identification.)

4 BY ATTORNEY PATTON:

5 Q. I want to show you
6 Petitioner's Exhibit A, and just have
7 you take a look at that. Okay.

8 A. Sure. Do I have time to read
9 the whole thing?

10 Q. Sure.

11 A. Thank you.

12 WITNESS REVIEWS DOCUMENT

13 A. Yes.

14 BY ATTORNEY PATTON:

15 Q. You've had a chance to review
16 it?

17 A. Yes, sir.

18 Q. Okay. Does that appear to be
19 a copy of a summarization report that
20 you prepared for Mr. Robert DeFoy in
21 June of 1997?

22 A. That's what this reflects,
23 yes, sir.

24 Q. Okay. If you look at the
25 second page of the form, does it

1 appear that at the time this
2 summarization report was done the
3 Board was still using the format
4 where you as the institutional parole
5 agent made a recommendation as to
6 whether or not you believed the
7 inmate in this case should be
8 re-paroled?

9 A. Correct. It appears that's
10 the format that we were using at that
11 time, sir.

12 Q. And so that has changed in the
13 intervening years, ---

14 A. Yes.

15 Q. --- the format, but it appears
16 that ---

17 A. Yes.

18 Q. --- at this point in time you
19 still were making a recommendation?

20 A. Correct.

21 Q. All right. Now, does the
22 summarization report indicate that
23 the superintendent or warden
24 recommended re-parole?

25 A. I'm sorry, I'm not --- can I

1 just take a second.

2 Q. Okay.

3 A. I just need a second here.

4 Yes, sir, it does.

5 Q. And also on the first page
6 does it indicate that ---

7 A. Yes, sir, it does.

8 Q. Okay. Now the report
9 indicates that there was a
10 psychological --- that a
11 psychological evaluation had been
12 conducted; correct?

13 A. That's what this reports, yes,
14 sir.

15 Q. Okay. And is it accurate that
16 --- well, let me back up and ask you
17 generally speaking, if an evaluation
18 had been done would you have actually
19 received a copy of the evaluation?

20 A. Yes, we should have received
21 an actual written copy of the
22 evaluation.

23 Q. Okay. And it appears that
24 that evaluation would have --- or
25 should have been attached to the

1 summarization report?

2 A. It would have been included in
3 the packet that was given to the
4 Parole Board.

5 Q. Okay. Is it accurate to say
6 that your summarization report states
7 that the evaluator noted that Mr.
8 DeFoy due to Mr. DeFoy's denial of
9 his sex offense and lack of
10 treatment, that Mr. DeFoy is not
11 appropriate for parole at this time;
12 is that accurate?

13 A. That appears to be accurate,
14 yes, sir.

15 Q. Okay. On the second page
16 under the heading parole
17 guidelines ---

18 A. Correct.

19 Q. --- it states that he's viewed
20 as an acceptable parole candidate
21 under the guidelines; is that
22 correct?

23 A. That's correct.

24 Q. Would that reflect --- would
25 it be accurate to say that that

1 reflects the fact that you had scored
2 Mr. DeFoy on the version of the
3 sentence --- of the parole decision
4 making guidelines, that were being
5 used at that time?

6 A. That's correct.

7 Q. And under the forms being used
8 at that time he received a score that
9 recommended him for release?

10 A. It was a score, a guideline
11 score for release.

12 Q. But yet is it also accurate to
13 say this, the form, indicates that
14 your recommendation was for the box
15 next to refused is checked; is that
16 correct?

17 A. That's correct.

18 Q. So did that indicate your
19 recommendation to the Board that Mr.
20 DeFoy not be paroled?

21 A. Not be re-paroled.

22 Q. Or excuse me, re-paroled?

23 A. Correct, sir.

24 Q. Okay. Based upon what's in
25 the report given the fact that the

1 warden recommended re-parole and that
2 the guidelines resulted in a score
3 that recommended re-parole, can you
4 tell from the report what it was that
5 led you to not recommend re-parole?

6 A. Just to correct that one
7 statement you made that warden
8 recommendation, it was actually a
9 superintendent recommendation at the
10 institution.

11 Q. Okay.

12 A. I'm sorry. Just give me one
13 moment, please? Just briefly.

14 Q. Sure.

15 A. I don't have a copy of the
16 actual Board action, the entire Board
17 action in front of me. But generally
18 speaking the Board action when they
19 set a re-parole, a re-commit and
20 re-parole, they generally have a
21 requirement which states subject to
22 no misconducts and we would --- he
23 would have been then listed for
24 re-interview due to those
25 misconducts.

1 Q. What would --- if I could on
2 that, just to provide some background
3 for you.

4 A. Yes, sir.

5 Q. Mr. Bradley can correct me if
6 I'm wrong but Mr. DeFoy's green sheet
7 said that he has an amount of back
8 --- revoking him and committing him
9 as a convicted parole violator,
10 ordered him re-paroled after 40
11 months of back time, subject to no
12 misconducts and participating in sex
13 offender treatment program. A Board
14 member issued a --- I don't know the
15 exact term for it, the release order
16 setting Mr. DeFoy for release at the
17 end of the 40 months, but during that
18 time he received a misconduct and so
19 that order was rescinded and he was
20 ordered to be listed on the next
21 available docket.

22 A. Okay.

23 Q. Which the next available
24 docket was June of 1997.

25 A. Okay.

1 Q. So that is the history of it.

2 A. I think to answer your
3 question based upon the misconduct,
4 based upon the fact that the Board
5 action required participation in sex
6 offender treatment, that is why I
7 made a recommendation of refuse.

8 Q. Okay. In the parole decision
9 making guidelines, ---.

10 ATTORNEY PATTON:

11 I don't have a copy of
12 this. I want to mark it, show
13 it to him, and then if we
14 could copy it afterwards. I'm
15 going to mark this as
16 Petitioner's Exhibit B. It's
17 stapled with some other
18 documents but you just --- it
19 would be seven pages in
20 length.

21 (Petitioner's Exhibit B
22 marked for
23 identification.)

24 A. Correct.

25 BY ATTORNEY PATTON:

1 Q. If you want to take a look at
2 those.

3 ATTORNEY BRADLEY:

4 Off the record.

5 OFF RECORD DISCUSSION

6 A. Yes.

7 BY ATTORNEY PATTON:

8 Q. On the second page of the
9 parole decision making guidelines
10 form, there are listed reasons for
11 parole refusal; is that correct?

12 A. Correct.

13 Q. And then there are a number of
14 items underneath that heading. The
15 first item listed there has to do
16 with whether or not an inmate has
17 received misconducts; is that
18 correct?

19 A. Correct.

20 Q. And so you can get a point or
21 multiple points and in this --- well,
22 you can get points for having
23 misconducts; is that correct?

24 A. Correct.

25 Q. And in this context, getting

1 points is a factor against getting
2 parole; would that be accurate to
3 say?

4 A. Correct.

5 Q. And so misconducts are
6 something that are factored into the
7 parole decision making guideline
8 score; is that correct?

9 A. Correct.

10 Q. And although in Mr. DeFoy's
11 case because he only had one
12 misconduct, he did not actually
13 receive any points under the parole
14 decision making guideline forms for
15 having misconducts; is that accurate?

16 A. That is correct.

17 Q. Okay. Because to get points
18 on the parole decision making
19 guideline forms there has to be
20 multiple misconducts?

21 A. Correct.

22 Q. Thank you. With regard to a
23 requirement that --- well, let's
24 stick with misconducts. Okay.

25 (Petitioner's Exhibit C

1 marked for
2 identification.)

3 BY ATTORNEY PATTON:

4 Q. Let me show you Petitioner's
5 Exhibit C.

6 WITNESS REVIEWS DOCUMENT

7 A. Yes.

8 BY ATTORNEY PATTON:

9 Q. Does Petitioner's Exhibit C,
10 does it appear to be a --- for lack
11 of a better description, a memo from
12 yourself to the Parole Board?

13 A. Correct.

14 Q. And does the memo indicate
15 that --- the memo is regarding Mr.
16 DeFoy; correct?

17 A. Correct.

18 Q. And the memo indicates that
19 Mr. DeFoy had been recommitted as a
20 CPV, which is a convicted parole
21 violator; correct?

22 A. Correct.

23 Q. And that he was ordered to
24 serve 40 months of back time;
25 correct?

1 A. Correct.

2 Q. And that the Board required no
3 misconducts during the service of
4 back time and the letter documents
5 that Mr. DeFoy did incur a class one
6 misconduct on November 6th of 1996
7 for refusing to obey an order?

8 A. Correct.

9 Q. Okay. The memo also goes on
10 to state that it's your understanding
11 from the SCI Houtzdale record's
12 office that Mr. DeFoy may be granted
13 a new trial on his detainer sentence;
14 is that correct?

15 A. Yes, sir.

16 Q. The detainer sentence would be
17 the sentence he would have rolled
18 over to after --- if he was
19 re-paroled; correct?

20 A. Correct. We call it re-entry.
21 Yes, sir.

22 Q. All right. And also the memo
23 states that you --- that the District
24 Attorney's office had called the
25 records office to set a bail hearing;

1 correct?

2 A. If I wrote that down that
3 would have been my understanding,
4 yes, sir.

5 Q. And your signature appears on
6 this memo; correct?

7 A. Yes, sir.

8 Q. And in the final paragraph of
9 the letter it states that in view of
10 the serious nature of his current
11 offense the serious detainer
12 sentence, IDSI, statutory rape, CMM,
13 the misconducts and the fact that he
14 may well be on the street shortly,
15 the Board may wish to suspend
16 re-parole and list for re-interview;
17 is that correct?

18 A. That was my suggestion, yes,
19 sir.

20 Q. Okay. And on the margin does
21 it have in there handwritten with
22 date of 4/18/97, to modify the
23 Board's action of November 23rd, 1993
24 by temporarily rescinding the
25 re-parole portion and list for

1 re-interview due to misconducts?

2 A. I see that entry, yes.

3 Q. Okay. And would it be fair to
4 say then that had Mr. DeFoy been
5 listed to actually be re-paroled,
6 that that re-parole was rescinded due
7 to his receiving the misconduct, that
8 that would be in response to him
9 obtaining a misconduct; right,
10 engaging in a misconduct?

11 A. I can't speak for why the
12 Board decided to --- what it decided
13 to do. I can't answer that question,
14 sir.

15 Q. Okay. But your recommendation
16 to the Board was to rescind the
17 re-parole due to the fact that he had
18 misconducts?

19 A. I asked them, I said the Board
20 may wish to suspend re-parole and
21 list for re-interview.

22 Q. Okay. And if you'll take my
23 word for it and Mr. Bradley can
24 correct me if I'm wrong, the Board
25 followed your recommendation and did

1 just that, suspended the re-parole
2 and was ordered --- ordered Mr. DeFoy
3 to be listed for the next --- for
4 re-interview?

5 A. Apparently so, yes, sir.

6 Q. All right. So if we assume
7 that that is in fact what happened,
8 is it fair to say then that due to
9 that misconduct Mr. DeFoy had to
10 spend some additional time
11 incarcerated on that parole violation
12 sentence?

13 ATTORNEY BRADLEY:

14 I'm going to object to
15 the form of the question, but
16 if you understand what he's
17 asking.

18 A. I'm not sure how much
19 additional time he may have done. I
20 don't know.

21 BY ATTORNEY PATTON:

22 Q. Sure. Okay. But he --- if he
23 had been ordered re-paroled, and that
24 re-parole order was rescinded, and he
25 was then ordered to get listed for

1 re-interview, he was going to have to
2 spend some additional time in custody
3 based on his misconduct?

4 A. Based upon the Board action
5 which if I recall correctly from
6 these reports was that he had no
7 misconducts and participated in sex
8 offender treatment. Based upon those
9 two items the best I can --- what I'm
10 surmising from these reports, that's
11 probably why the Board did what it
12 did, and he spent additional time.

13 Q. Okay.

14 A. Okay, sir?

15 Q. Sure. In the letter that ---
16 this letter that is Petitioner's
17 Exhibit C, is it accurate to state
18 that no where in there do you suggest
19 to the Board that Mr. DeFoy should
20 not be re-paroled due to a failure to
21 participate in sex offender
22 treatment?

23 A. No. It's not in there.

24 Q. So it is fair to say that in
25 Petitioner's Exhibit C you did not

1 present to the Board as a reason for
2 rescinding the re-parole, the fact
3 that Mr. DeFoy had not completed sex
4 offender treatment?

5 A. That should be correct, and
6 when we have a case which has a
7 recommit and re-parole, we generally
8 would follow through with that,
9 subject to the person not having
10 misconducts which would be obvious
11 because we always got copies of the
12 misconducts in the institutional
13 parole office on every inmate that
14 came, no matter who was on parole or
15 what. One of the things that they
16 require the institutional staff is
17 that prior to any re-parole of any
18 type of release, is the individual,
19 prior to placing that person on
20 re-parole or parole, is to make sure
21 that that person has complied with
22 all stipulations of the Parole Board.
23 I'll give you an example.

24 Sometimes they'll parole
25 somebody upon completion of the

1 therapeutic community which is they
2 call the TC unit, which is
3 approximately 12 to 14 months. And
4 if the person is in the middle of
5 that program or towards the end of
6 it, the Board will want to encourage
7 the completion by paroling him upon
8 completion of the treatment, the TC
9 unit. So it's institutional staff's
10 position, our job to make sure prior
11 to re-paroling or paroling
12 individuals he did --- he or she did,
13 in fact, complete that. At this
14 particular time that --- I'm just
15 surmising or guessing that that would
16 not have been an issue that was
17 brought to my attention at that point
18 in time, that he was not
19 participating in sex offender
20 treatment.

21 Getting a report from the
22 Department of Corrections later
23 telling me that he was not
24 participating, made --- was
25 additional information for the Board

1 to be prepared at that time. Okay.

2 Q. In the example you were giving
3 about if a person has a re-parole
4 order say upon completion of their
5 therapeutic community, you indicated
6 it would be institutional staff's
7 responsibility to make sure that the
8 person had actually done the
9 therapeutic community before he was
10 released; is that correct?

11 A. To get a copy of that
12 certificate, just to be in compliance
13 with the Board's directives.

14 Q. In that instance when you were
15 talking about institutional staff,
16 are you talking about the
17 institutional parole agent or someone
18 from the Department of Corrections?

19 A. One would hope that the
20 counselor would automatically forward
21 over a certificate of completion for
22 the TC unit. But it's our
23 responsibility because we're putting
24 our name on the release order, to
25 make sure that we have that

1 information prior to any parole or
2 re-parole.

3 Q. If Mr. DeFoy's green sheet had
4 ordered that he be released on March
5 25th of 1997, subject to completion
6 --- subject to no misconducts and
7 completion of sex offender treatment
8 program, what are --- do you know why
9 as of the date of this memo, April
10 10th, 1997, Mr. DeFoy had not rolled
11 over to his new number?

12 A. Not to my knowledge. I'm only
13 surmising that he may have been a
14 recent transfer to SCI Houtzdale.

15 Q. He had been there for quite
16 some time, actually.

17 A. Had he been?

18 Q. Yes.

19 A. Okay.

20 Q. Let me ask you this. What
21 systems are in place to document the
22 fact that if somebody has been
23 ordered re-paroled, that that date
24 gets somehow, you know, highlighted
25 so that when the inmate reaches that

1 date they are released?

2 A. We used to use an old five by
3 seven card catalog for parole and
4 re-parole cases. In other words they
5 would upon a certain date, we would
6 pull those prior to that time and get
7 a urinalysis, and parole or re-parole
8 an individual. I cannot account for
9 why this did not happen. If that's
10 the question you're asking me.

11 Q. Okay. Yeah. Is it fair to
12 say you don't have any personal
13 recollection as to in this particular
14 case why he may not have been
15 released?

16 A. I could guess. We were very
17 short-handed at the institution,
18 processing anywhere from 80 to 90
19 interviews per month at that ---
20 about that time. Since that time
21 they now have a full-time supervisor
22 there, three or four full-time
23 agents, and I think three clerks. At
24 that time there was a visiting
25 supervisor, two agents and an

1 institutional clerk. I cannot --- I
2 don't know how --- I can't answer
3 your question as to why he didn't
4 re-parole on that date. No, sir.

5 Q. Okay. Is it accurate to say
6 --- let me get the green sheet for a
7 second, okay. Bear with me for one
8 moment. Okay.

9 A. I'm not going anywhere.

10 Q. Let me ask you this. If you
11 will assume for me that the Board
12 issued a green sheet for Mr. DeFoy
13 stating that he should be re-paroled
14 as of March 25th of 1997, subject to
15 no misconducts and subject to
16 participating in a sex offender
17 treatment program, should he ---
18 should that date have been
19 highlighted however you did it, or
20 the other agent in the institution
21 did it, so that when that date rolled
22 around you would, at a minimum check,
23 to see had he complied with the
24 requirements put on him for the Board
25 so that he could be considered for

1 release?

2 A. I cannot go back and answer
3 that --- to honestly answer that
4 question I can't give you an answer
5 as to why that wasn't done. I do
6 know that the re-parole date was 3/25
7 of '97, and this memo was dated 4/10
8 of '97. I can't answer that
9 question. I don't recollect why that
10 didn't happen.

11 Q. Petitioner's Exhibit C,
12 actually in the first paragraph, you
13 state that the Board had ordered
14 re-parole on 3/25 of '97; correct?

15 A. Correct.

16 Q. Okay. Is there any way to
17 your knowledge that you could or any
18 documents that you could look at that
19 could shed light on why Mr. DeFoy was
20 not released or re-paroled on March
21 27th, 1997?

22 A. I cannot answer that question.
23 I can't even recall what cases were
24 assigned to me as by number. I don't
25 remember what numbers I had. I was

1 the senior lead agent and it may have
2 fallen upon me to do these memos back
3 to the Board. And it may be that if
4 this was assigned to someone else
5 then it --- that's why it came to me
6 at that time. But I can't answer
7 that. I cannot answer that question.

8 Q. Is it accurate to say that if
9 the March 25th, 1997 date came
10 around, and as of that date the last
11 Board directive was re-parole on
12 3/25/97, and there hadn't been any
13 other Board action, is it accurate to
14 say that Mr. DeFoy then should have
15 rolled over to his new sentence on
16 March 25th of 1997?

17 A. I cannot recall why that
18 action did not take place. I just
19 cannot recall.

20 ATTORNEY BRADLEY:

21 I think he's asking you
22 a different question.

23 A. I'm sorry. Could you say it
24 differently? I'm sorry.

25 BY ATTORNEY PATTON:

1 Q. Sure. No problem. If the
2 last Board action in Mr. DeFoy's case
3 was correcting the re-parole date to
4 set the re-parole date at March 25th
5 of 1997, and there was no other Board
6 action, then if the March 25th, 1997
7 date came around, should --- is it
8 accurate to say that Mr. DeFoy should
9 have been re-paroled in his case and
10 gone over to his new sentence because
11 he had a detainer sentence?

12 A. That would be one way of
13 looking at it. I don't know when our
14 office was provided with this copy of
15 this 11/6/96 misconduct. Whether it
16 came late to our attention or not.
17 And it's possible that we were not
18 apprised of that misconduct
19 initially. And to me the fact that
20 he was past the re-parole date,
21 didn't matter if he had misconducts.
22 My only guess.

23 Q. Do you have the authority as
24 the institutional parole agent to not
25 release someone on their re-parole

1 date set by the Board because you
2 feel they have not complied with the
3 conditions placed on the Board, but
4 there is no Board action changing the
5 re-parole date?

6 A. That's a very good question.
7 At some point I was concerned enough
8 to send a memo into the parole board
9 apprising --- advising them of the
10 situation. And that's the way we
11 handled it.

12 Q. As a parole agent, do you have
13 the authority to alter or change
14 Board actions?

15 A. No, sir, I do not.

16 Q. I'd like to talk some about
17 the sex offender treatment program
18 and the requirement that someone
19 participate in the sex offender
20 treatment program. Okay?

21 A. Certainly.

22 Q. In your experience, 15 years
23 working for the Board, if the Board
24 has told an inmate that the Board
25 wants that inmate to participate in

1 sex offender treatment, and if the
2 inmate refuses to do so, will the
3 inmate be paroled or re-paroled?

4 A. Just to correct the statement
5 as correct as possible, in a minimum
6 case we don't --- the Board doesn't
7 tell anybody anything. They look to
8 see what kind of reports the
9 Department of Corrections comes up
10 with. If the individual is not
11 participating and the Board sees
12 that, and they refuse and set a
13 review date, then they'll add their
14 weight to the fact that the person
15 should participate in sex offender
16 treatment, or in a re-parole review
17 case sometimes the Board will make
18 that a condition. But I can't think
19 of cases where people were paroled
20 without sex offender treatment. Not
21 to my knowledge, no, sir.

22 Q. Okay. Would it be fair to say
23 that within the institution both be
24 it corrections --- the department
25 staff, institutional parole staff,

1 and the inmates, it is understood
2 that if you have not completed sex
3 offender treatment program, that has
4 been recommended by the Board, that
5 the inmate just is not going to be
6 paroled or re-paroled?

7 A. That decision is made by the
8 Board in Harrisburg. I know that all
9 crimes of violence are very carefully
10 scrutinized by the Parole Board. And
11 if for instance if a person is in for
12 assaultive behavior, perhaps robbery
13 or beating someone up and refused to
14 participate in anger management or
15 those types of programs, the
16 likelihood is that that person is
17 probably not going to be paroled.
18 And with respect to sex offender
19 treatment, again, that decision is
20 made by Harrisburg, but I know it's a
21 case that they look at very
22 carefully.

23 Q. It's accurate to say that you
24 cannot recall any case in which an
25 inmate who has not --- who has been

1 told that they need to participate in
2 sex offender treatment program but
3 who has not has actually been
4 paroled?

5 A. I can't recall of any cases
6 but I have seen many many cases each
7 year. I couldn't even characterize
8 how many cases I see in a year.

9 Q. Would it be fair to say that
10 if an inmate actually did get paroled
11 that they hadn't done sex offender
12 treatment program that that would be
13 something very out of the ordinary?

14 A. I would be surprised.

15 Q. Is it therefore accurate to
16 say that the chances are that if you
17 ever saw that happen, there's a good
18 chance that may kind of stick out in
19 your mind because it would just be
20 something that would be very
21 different than what you would
22 normally see?

23 A. Not many cases have stuck out
24 in my mind, I'm sorry to say that.
25 But I just --- I can't --- I can't

1 see where an inmate would be paroled
2 without some treatment of whatever
3 type it might be. Whether it's drug
4 and alcohol or anger management,
5 batterers intervention, or sex
6 offender treatment, it's hard --- I
7 just don't see those kinds of people
8 who don't participate in treatment
9 --- I don't see those people as being
10 released by the Board.

11 Q. Okay. When somebody comes
12 back in as a convicted parole
13 violator, do you know how their new
14 maximum dates get calculated?

15 A. I don't do those computations
16 but I have an understanding as to how
17 they do those.

18 Q. Okay. What's your
19 understanding?

20 A. It depends upon whether they
21 posted the bail on the new offense or
22 not as to how they credit to back
23 time. And after they return as a
24 convicted parole violator, and they
25 have the state sentence, once they

1 re-enter that state sentence, the
2 Department of Corrections takes a
3 look at credit issues as well. And
4 sets a min and max date for the new
5 --- if there's a new case to come to.

6 Q. And an institutional parole
7 agent, are you involved at all in
8 actually calculating the dates?

9 A. No, sir, I'm not. No, sir.

10 Q. Pardon me just a minute, I
11 just want to make sure I covered
12 everything.

13 Do you have any experience
14 with the Board rescinding parole that
15 has already been granted?

16 A. You mean like a rescission
17 hearing?

18 Q. I'm sorry. Yeah, well, for
19 example, the Board enters a green
20 sheet saying the re-parole order
21 dated whatever is rescinded, the
22 parole portion is rescinded.

23 A. Okay.

24 Q. Well, that's a bad way to ask
25 it.

1 Does the Board have, under
2 your understanding, and in your
3 experience, does the Board have the
4 power after they have actually
5 ordered someone released on parole
6 and someone has actually been
7 released on parole, to then say I'm
8 going to rescind that order, not
9 based on any new violation you have
10 committed since your release, but
11 because we decided now that we
12 shouldn't have paroled you in the
13 first place?

14 A. The Board has the authority to
15 conduct a rescission hearing on ---
16 on the actual release order, every
17 release order, parole --- and I can't
18 recall the exact wording of it,
19 subject to no misconducts and any
20 previously undiscovered problems or
21 crimes come up, they --- in other
22 words, if he didn't commit any new
23 violation or get a new arrest but
24 they found out that, you know,
25 sometime ago this individual was

1 involved in an --- you know, an armed
2 robbery and the police want him or
3 her, they can do a rescission hearing
4 and bring him back into custody.
5 It's called a rescission --- I've
6 never participated in one of those
7 and I don't think there is that many
8 that are held.

9 Q. Okay.

10 ATTORNEY PATTON:

11 That's all my
12 questions.

13 ATTORNEY BRADLEY:

14 I have no questions.
15 You have the opportunity to
16 review a transcript of this if
17 you wish. I leave that
18 decision to the witness, or
19 you can rely on the accuracy
20 of the court reporter.

21 A. I trust her to do a good job.

22 ATTORNEY BRADLEY:

23 We'll waive on this one
24 too.

25 DEPOSITION CONCLUDED AT 1:23 P.M.

1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF CAMBRIA)

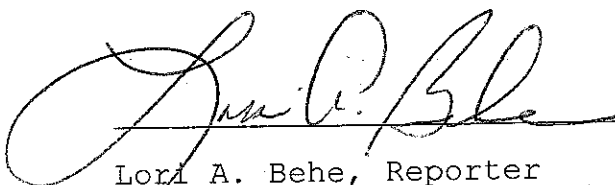
3
4 C E R T I F I C A T E

5
6 I, Lori A. Behe, a Notary Public in and for
7 the Commonwealth of Pennsylvania, do hereby
8 certify:

9 That the witness whose testimony appears in
10 the foregoing deposition, was duly sworn by me on
11 said date and that the transcribed deposition of
12 said witness is a true record of the testimony
13 given by said witness;

14 That the proceeding is herein recorded fully
15 and accurately;

16 That I am neither attorney nor counsel for,
17 nor related to any of the parties to the action in
18 which these depositions were taken, and further
19 that I am not a relative of any attorney or
20 counsel employed by the parties hereto, or
21 financially interested in this action.

22
23 
24 Lori A. Behe, Reporter

25
NOTARIAL SEAL
LORI A. BEHE, Notary Public
Colver, Cambria County, PA
My Commission Expires July 20, 2010

Page	Line
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PHILADELPHIA, PA
WILKES-BARRE, PA
OIL CITY, PA
SOMERSET, PA
CLEARFIELD, PA
CHARLESTON, WV

JUN 18 '97 16:38 FR SC RESSON PBPP

814 886 4588 TO 1 43781036

P.05/14

JUN 18 1997

PBPP-382 (4/97)

Interview Month JUNE 1997**SUMMARIZATION REPORT**Inst/Docket No. SCI-HD #56Name Robert DeFoy Inst and No. SCI-Houtzdale, AK-1017 Parole No. 1226-J

Minimum

Review ☒

(Reparole)

OFFICIAL VERSION (See Attached)

PBPP 139

DC-1B

PBPP-30

PSI

Others (Indicate) ☒ None available

RESIDENT'S VERSION DC-1B PBPP-130 PSI Subject Interview

PRIOR ADULT RECORD Number of: Source PSP Rap SheetConvictions 1 Confinements 1 Probation Revocations 0 Parole Revocations 1

ADDITIONAL INFORMATION (See attached report)

Psychiatric Psychological ☒ Medical Misconducts ☒ 11/6/96Source 6/16/97

Fines, Costs, Restitution

Unlisted

Amount

PROBLEM AREAS

Assaultive ☒Sexual ☒

Vocational

Alcohol

Psychiatric/Psychological ☒

Drugs

Educational

Others (Indicate) ☒

Juvenile Record

Superintendent - Warden RECOMMENDATION

Parole

Reparole ☒

Refuse

Others (Indicate)

ANALYSIS

Board Action recorded 11/5/93 refers to Board Action of 11/10/92 to Recommit to a SCI as a CPV to serve 40 months backtime . . . Reparole 3/25/93 to State Detainer Sentence. Board Action recorded 11/23/93 modifies Board Action of 11/5/93 by correcting Reparole date to 3/25/97. Board Action recorded 4/22/97 was to modify Board Action of 11/23/93 and 11/5/93 by temporarily rescinding the Reparole portion due to misconducts and now list for reinterview on the next available docket. Subject was added to the June docket.

Currently, the subject is a 45 year old married male recommitted by the Board for a new conviction - rape of his stepdaughter. He is originally serving a 10 to 20 year sentence for armed robbery. Official Version reports he used a 45 caliber handgun in this robbery. Subject was received at SCI HD 5/8/96 from SCI Dallas. His Prescriptive Program Plan included No Misconducts, Good Housing and Work Reports, D/A Education, Stress/Anger, Sex Offender Programming. He received 1 Class I Misconduct 11/6/96 for Refusing To Obey An Order and was sanctioned with 30 days cell restriction. He Earns Above Average Housing and Work Reports (assigned to Culinary Department). He is presently assigned as Blockworker.

Psychological evaluation conducted 6/16/97 notes:

Subject denies any substance abuse history. During his interview with the evaluator, he responded with a sarcastic manner stating that coming up for parole was 'bullshit' and 'the Parole Board screws everybody'. The subject was extremely angry. The evaluator noted that due to his denial of his sex offense and lack of treatment, he is not appropriate for parole at this time. The evaluator recommended he needs to participate in Sex Offender Treatment prior to any consideration for parole release.

JUN 18 '97 16:38 FR SCI SESSION PBPP
JUN 18 1997 2:26PM SCI JIZHLE PHOLE

814 886 4588 TO 1 8781036

P.06/14

SUMMARIZATION REPORT FOR Robert DeFoy, AK-1017/1226-J

PAGE 2

ANALYSIS CONTINUED:

On 4/9/97 the Records Office notified this writer subject may receive a new trial on this matter. On 4/11/97, this writer spoke with the subject. The subject threatened to sue this writer for him not being released. In a letter dated 5/22/97 from York County reports the subject was granted a new trial regarding his detainer sentence. Bail was granted in the amount of \$20,000 which has been posted.

Subject Has Secured Institutional Support for Reparole.

PAROLE GUIDELINES

He is viewed as an Acceptable Parole Candidate under the Guidelines.

DETAINERS

None listed.

PLAN

Parole Plan approved 5/19/97 by the York SO.

PAROLE STAFF RECOMMENDATION INCLUDING SPECIAL CONDITIONS:

Parole Reparole Continue Refuse ☒


Frederick L. Cutler, Parole Agent II

6/18/97

Date

D76
I15
6-18-97

PENNSYLVANIA BOARD OF PROBATION AND PAROLE

PBPP-301 (6/90)

CLIENT NAME Robert D. Fev PAROLE NUMBER 1226-V
 DATE OF INTERVIEW 6/19/97 INSTITUTION Stateville/ AK-101

PAROLE DECISION MAKING GUIDELINES

I PAROLE PROGNOSIS ASSESSMENT

Reparole Review

INSTRUCTIONS: Information on age-at-minimum-sentence, prior convictions, PPA offense code and prior probation or parole revocations should be provided in column 1. The appropriate risk classification score in column 2 should be placed in column 3 and subsequently added together in the total PPA score box. Based upon the total score number, the client may then be classified into a risk category according to the range of scores shown at the bottom of the instrument. Clients with multiple offenses should have each offense ranked in ascending score order according to the offense ranking at the bottom of the page. This process results in a risk assessment which is sensitive to potential future crime. Column 4 may be used to reassess a case if the interview suggests that the assessment information was incorrect.

COLUMN 1 Variable	COLUMN 2 Score Allocation for Risk Assessment	COLUMN 3 Classification Score	COLUMN 4 Reassessment
Age at Minimum: <u>30</u> yr. Minimum Sentence Date <u>9/29/92</u>	0 if 40 years or older 21 if 26-39 years 38 if 25 years or younger	<u>21</u>	
Prior Convictions: Number: <u>1</u>	0 if no prior convictions 9 if 1 or 2 convictions 26 if 3 or more convictions	<u>9</u>	
PPA Offense (Ranked According to Index) 1. <u>Robbery w/ Acc.</u> 2. <u>Aggravated Assault</u> 3. <u>Sex Offense</u> 4. _____ 5. _____	0 if not elsewhere classified 20 if theft, fraud, burglary or robbery	<u>20 (20)</u>	
Probation Revocations <u>0</u> Parole Revocations <u>1</u> Total: <u>1</u>	0 if none 16 if 1 or more	<u>16 (16)</u>	
TOTAL P.P.A. SCORE		<u>57 (57)</u>	

Parole Prognosis Assessment Score Category CHECK ONE: 71-100 High Risk ☐ 45-70 Medium Risk ☒ 0-44 Low Risk ☐

Instant Offense in descending recidivism rank order: 1) Theft/Fraud, 2) Burglary, 3) Robbery, 4) Aggravated Assault, 5) Drug Law Violation, 6) Arson & Miscellaneous, 7) Simple Assault & Kidnapping; 8) Sex Offenses, 9) Manslaughter, 10) Murder.

II POTENTIAL ASSAULTIVENESS/DANGEROUSNESS SCREEN

Assaultiveness is a course of conduct that presents, or is calculated to present, a danger or perceived danger to any person. An assaultive instant offense is defined as any single conviction offense for the current sentence of the following type: murder, manslaughter, rape, and other assaultive sex offenses, robbery, kidnapping, aggravated or simple assault, arson against persons, weapon law violations, or homicide by vehicle.

Official versions or facts of crime are required for all offenses in the definition above prior to a final Board action.

- Does the client have an assaultive instant offense based upon the definition above, or based upon the official version of the offense in the case of a plea bargain? ☒ YES ☐ NO
If the answer to the above question is "yes", mark a score of (1) on p. 2, III(7), and answer the following question.
If the answer to the above question is "no", stop here.
- Does the client have a mental health problem which requires treatment in the form of either individual or group therapy/counseling and/or psychotropic medication? (Rape and all other assaultive sex offenses require a "yes" answer). ☒ YES ☐ NO
If the answer to the above question is "yes", mark the client as having a very high assault potential with a score of (3) on p. 2, III(8) and stop here.
If the answer to #2 is "no", answer the following question:
- Did the client have any institutional problems/misconducts which were assaultive in nature within the last 12 months or the last one-half of the minimum sentence, whichever is longer? ☐ YES ☐ NO
If the answer to the above question is "yes", mark the client as having a high assault potential with a score of (2) on p. 2, III(9).

PETITIONER'S
EXHIBIT
5

III PAROLE CONSIDERATION FACTORS

Each unfavorable factor listed below is a possible reason for refusing parole as a matter of policy. Select the appropriate column from the PPA on p. 1. If the response to a specific unfavorable factor is in the affirmative, the appropriate score of 2 or 1 must be entered. If the response is in the negative, a 0 goes in the blank space provided. Enter the total score of unfavorable factors at the bottom of the appropriate column.

REASONS FOR PAROLE REFUSAL	SCORE	PAROLE PROGNOSIS ASSESSMENT		
		High Risk	Medium Risk	Low Risk
Unfavorable Factors from Institutional Performance:				
1) Three or more Class II misconducts, or two Class II and one Class I misconducts, during the last twelve (12) months or the last one-half of the minimum sentence, whichever is longer.	1	_____	<u>0</u>	<u>0</u>
2) Two or more Class I misconducts during the last twelve (12) months, or the last one-half of the minimum sentence, whichever is longer.	1	_____	<u>0</u>	<u>0</u>
3) Open charges* for new crimes, or new convictions, while serving this prison sentence.	2	_____	<u>0</u>	<u>0</u>
4) Removed from CSC, work release or prerelease for cause. *(prima facie case was established.)	2	_____	<u>2</u>	<u>0</u>
Unfavorable Factors from Prior Record:				
5) Substance Abuse	2	_____	<u>0</u>	<u>0</u>
6) Habitual Offender	1	_____	<u>0</u>	<u>0</u>
Unfavorable Factors from Instant Offense:				
7) Assaultive Instant Offense (from page 1, II (i))	1	_____	<u>1</u>	<u>1</u>
8) Very high assaultive behavior potential (from page 1, II (2))	3	_____	<u>0</u>	<u>0</u>
9) High assaultive behavior potential (from page 1, II (3))	2	_____	<u>0</u>	<u>0</u>
10) Victim Injury	1	_____	<u>0</u>	<u>0</u>
11) Client had weapon in the commission of offense. <input checked="" type="checkbox"/> Firearm <input type="checkbox"/> Knife <input type="checkbox"/> Other	1	_____	<u>1</u>	<u>0</u>
TOTAL UNFAVORABLE FACTOR SCORE			<u>4</u>	<u>1</u>
Parole Policy Guideline Recommends Refuse if Total Score is:		5 or more	6 or more	7 or more

Guideline Policy Recommendation: Parole ☒ Refuse ☐

DEFINITIONS:

- Open Charges** - This refers to new criminal charges being filed while on pre-release or as a result of criminal conduct at a correctional facility. If open charges are to be accepted as a basis for parole refusal, a prima facie case must have been established.
- Substance Abuse** - There is a record of substance abuse which lead to police arrests and/or clinical determinations.
- Habitual Offender** - This refers to a person who has a total of three or more prior convictions for similar types of offenses in his criminal history. For example, they may be convictions for burglary and robbery, or for drug law violations. Also, a person is included who simply appears to have developed a criminal life style based upon four or more convictions which may be dissimilar. A corollary concept refers to a person in syndicated or organized crime.
- Victim Injury** - The official version of the offense must indicate physical injury to the victim of the crime, however slight. In cases of sexually assaultive behavior, psychological injury to the victim is also frequently the case; therefore, in all cases of sexual assault an unfavorable factor score of 1 is to be entered.
- Weapon** - The official version of the offense must place the client in actual or constructive possession of a weapon. The definition of weapon contained in Board regulations states: "Anything readily capable of causing harm to or intimidating another, possessed under circumstances not manifestly appropriate for any lawful use that the object may have". In a crime such as "homicide by vehicle", the vehicle would not be a weapon under the above definition unless: 1) there was a DUI involved, or; 2) there was a clear intent to harm the victim by using the vehicle as a weapon. Under both exceptions, the circumstances were not manifestly appropriate for any lawful use according to our definition.

IV. COUNTERVAILING FACTORS TO EXPLICIT POLICY OF PAROLE DECISION MAKING GUIDELINES

A. Factors Countervailing a Guideline Recommendation to Refuse Parole:

GENERAL POLICY: Where factors of risk have been reduced by participation in available institutional programming, the quantity and quality of program participation should correspond to the level of risk involved to be a meaningful countervailance to a parole guideline recommendation to refuse. Where available prison programming could reduce the risk of parole failure, it will be prescribed by the Board as a necessary program to assure release.

YES ☐ NO ☐

1. Inventory of Institutional Programming

a. Was there positive response to prescriptive or other prison program plans?

Program 1) _____ Benefit 1) _____
 Program 2) _____ Benefit 2) _____
 Program 3) _____ Benefit 3) _____

YES ☐ NO ☐

2. Do other factors support a parole action? (For example, recommendations by the Department of Corrections, Board staff, strength of parole plan) _____

B. Factors Countervailing a Guideline Recommendation to Parole:

GENERAL POLICY: The parole guidelines provide a uniform method for assessing parole suitability and risk. In some instances, guideline assessments may indicate medium or low risk; however, other risk factors may contravene and suggest that the likelihood of successful reintegration is low while the threat to the safety of the community is high. The factors listed represent risks outside of the parole guideline for which a parole refusal may be justified.

YES ☐ NO ☐

1. The client displayed psychotic or clearly dangerous behavioral characteristics during the parole interview. ☐ YES ☐ NO
2. The client had a recent psychiatric/psychological report which causes concern. ☒ YES ☐ NO
3. There were strong objections from the sentencing judge, the district attorney, or the victim of the crime. ☐ YES ☐ NO
4. The client is a habitual offender for assaultive crimes. ☐ YES ☐ NO
5. There is an unfavorable recommendation from the Department of Corrections or Board Staff. ☒ YES ☐ NO
6. There are other factors supporting a parole refusal: ☒ YES ☐ NO

*refuses S.D.T.
 negative attitude*

Instructions: The countervailing factors to a guideline recommendation to refuse parole (A) or to parole (B) are for information to the decision makers only. Countervailing factors checked in (B) are not to be communicated in the Board action as such. The Board Member/Hearing Examiner will supply the appropriate reasons for refusal in his/her decisions in section VII of this guideline document.

V FINAL DECISION MAKING ANALYSIS

Decision Outcome and Guideline Consistency: Use the appropriate guideline recommendation column to check off the interviewer decision.

Instructions: Inmates refused parole may be eligible for the Special Early Release Program. If eligible, indicate a parole action in item 2 below and check the box titled SERP. The initial and date space on this page is to be completed for a "continue" decision only. Final decisions are initiated on page 6 of this document when there is no "continue" action preceding it. If the case has been continued, for whatever reason, the final decision can be initiated on this page with the appropriate completion of section VI or VII, whichever is appropriate to the decision.

Initial & Date	BOARD DECISION	Guideline Recommendation	
		Parole	Refuse
DRG 6/19/97	1) Continue: a) to approved plan b) pending receipt of information (Specify) <u>CLARIFICATION OF STATUS OF 7/16/92 CONVICTION</u> <u>(PDSI, CMM, STATE RAPE)</u> c) pending successful adjustment to C.S.C., review in _____ d) pending disposition of criminal charges	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
	2) Parole to Approved Plan <input type="checkbox"/> SERP 3) Parole to in-patient program; approved home to be available	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
	4) Parole to Detainers: <input type="checkbox"/> To Board/backtime detainer sentence only; <input type="checkbox"/> to State Sentence; approved home to be available prior to release to the community. <input type="checkbox"/> while confined must participate in _____ <input type="checkbox"/> To other detainer sentence; approved home to be available: Check one: <input type="checkbox"/> County <input type="checkbox"/> Sentence <input type="checkbox"/> Untried Case <input type="checkbox"/> Other State (approved home necessary if untried case) <input type="checkbox"/> Federal <input type="checkbox"/> Sentence <input type="checkbox"/> Untried Case <input type="checkbox"/> Violation of Probation Parole <input type="checkbox"/> Immigration and Naturalization <input type="checkbox"/> When released to the community, special conditions as prescribed imposed. <input type="checkbox"/> Other: _____	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
	5) Refuse Parole	<input checked="" type="checkbox"/>	<input type="checkbox"/>

NOTES:

NOTES: "He is just a regular streetwise"
Aged 45; original sentence is 10-20 yrs for robbery; ret. as CPV for rape of stepdaughter
(had 6 1/2-13 yrs. sent. to serve); Bd. act of 11/23/93 was to reparable to 3/25/97; rec'd Chas T misconduct
(refusing an order) and has been granted new trial on the 1st, etc (he has posted bond); Bd act of
4/22/97 refused inmate for interview; previous CCC failure (drugs); also previously returned for
possessing sword? loaded .22 in his home; since CPV return has completed
Stress/Anger; refused S.O.P. (says not guilty, so won't talk to); if paroled,
live w/wife, look for work (P.P. approval 5/15/97). Inmate says he "thinks" he has
posted bond - via property bond - but he is not "sure" the D.A. (?) effected the bond.
NOTE: 8/11/97 - Rec'd attached York Co. natural - and legal opinion that since DA filed
+ L.P. + in the 20 resolved

VI SPECIAL CONDITIONS OF PAROLE

YES NO

1. Are special conditions of parole necessary? ☐ ☐2. Did the inmate raise objections to any special condition? ☐ ☐

3. What is the presenting problem to adjustment, or danger to the community? _____

4. Complete if special conditions of parole are necessary:

____ Prior to release to an in-patient program, you will be required to sign the appropriate release form for confidential information.

____ Removal or termination from the in-patient program for any reason other than successful completion is a violation of your parole.

WHEN PAROLED OR AFTER SUCCESSFUL COMPLETION OF THE IN-PATIENT PROGRAM, YOU MUST COMPLY WITH THE FOLLOWING SPECIAL CONDITIONS OF PAROLE:

____ You must abide by all of the supervision requirements in the Special Early Release Program

____ Out-patient (drug/alcohol/sex offender/mental health/other: _____) treatment [circle] is a special condition of your parole supervision until the treatment source and/or parole supervision staff determine it is no longer necessary. You will be required to sign the appropriate release form for confidential information.

____ You must cooperate with TASC-SCI and follow all treatment recommendations.

____ Upon your release on parole, you will be evaluated to determine your need for (drug/alcohol/mental health/other: _____) treatment [circle]. Prior to the evaluation being conducted, you will be required to sign the appropriate release form for confidential information. If the evaluation reveals that treatment is indicated, this special condition of parole will be amended to include other appropriate special conditions imposed by your parole agent.

____ You must submit to (urinalysis testing/mandatory urinalysis testing) [circle]

____ You must achieve negative results in screening tests randomly applied for the detection of the presence of controlled substances or designer drugs and you must pay for the costs of the tests. (Act 97 - _____)

____ You must not consume alcohol under any conditions or for any reason

____ You must not enter establishments that sell or dispense alcohol

____ You must not contact or associate with persons who sell drugs, or with drug users, outside of a treatment setting.

____ You must take psychotropic medication if prescribed by your doctor

____ You must support your dependents

____ You must not contact or associate with _____ for any reason

____ You must maintain (employment/vocational training/educational training/other/ _____) [circle] as approved by parole supervision staff.

____ You must engage in an active job search during any period of unemployment, and provide verification as directed by parole supervision staff.

____ Other: _____

SPECIAL INSTRUCTIONS TO PAROLE SUPERVISION STAFF

VII REASON FOR PAROLE REFUSAL AND REVIEW DATE

1) Reasons for refusal:

- 7 a) factors cited in guidelines section(s) III, 4, 7, 1, 1
- b) negative interest in parole
- c) your need for: (check the appropriate need)
- ☐ counseling ☐ education
- ☐ treatment ☐ vocational training
- 8 d) failure to participate in and benefit from a treatment program for:
- ☒ sex offenders ☐ mental health problems
- ☐ substance abuse ☐ other: _____
- e) unfavorable recommendation from the:
- ☐ district attorney ☐ warden of county prison
- ☐ sentencing judge ☐ Department of Corrections
- X f) other: MISCONDUCT

2) Review date and conditions for release consideration:

- X a) review in JUNE 1998 for tentative _____ release
- b) must participate in P.P.P. INCLUDING S.O.T.
- 8 c) you must maintain a clear conduct record and MAINTAIN an institutional recommendation for parole.
- d) review in _____, or earlier, if recommended by the Department of Corrections because of demonstrable benefit from participation in an appropriate treatment program for:
- ☐ sex offenders ☐ mental health problems
- ☐ substance abuse ☐ other: _____
- e) serve your unexpired maximum sentence _____
- f) parole to an approved plan upon condition that there are no misconducts, effective _____ and subject to the following special conditions (see page 5)

VIII PANEL MEMBER CONCURRENCE

- 1) Interviewing Panel Member DR Cook Date 8, 1, 97
- DEBORAH R COOK AUGUST 1, 1997
- 2) Board/Panel Member John B. Null Date 8, 12, 97 Agree ☒ Disagree ☐
- Explain Disagreement: _____
- 3) Board/Panel Member _____ Date _____ Agree ☐ Disagree ☐
- Explain Disagreement: _____

Instruction: Agreement or Disagreement references position relative to the preceding response.

IX SPECIAL CONDITIONS OF PAROLE AND THE PAROLE PLAN

GENERAL POLICY: The parole plan is a contract which provides the public some assurance that their community will be protected while the means to reintegrate the offender are implemented. The plan is judged therefore in context of the client's P.P.A. and unfavorable factors which suggest risk to the community. The higher risk client requires more stringent criteria when the plan is viewed as a countervailing to risk. Discretion for approval of a parole plan is a field staff prerogative unless the Board has specific cause to intervene. Where an approved plan is not available, specific approval criteria commensurate with assessed risk will be set by the Board as special conditions of parole.

A. PAROLE PLAN CHECK LIST

1. Does the client have a detainer sentence?

YES ☒ NO ☐

Type: ☐ State ☐ Board ☐ County ☐ Federal ☒ Untried Case ☐ Immigration and Naturalization
☐ Violation of Probation or Parole ☐ Other

2. The client made some effort to prepare a parole plan.

YES ☒ NO ☐3. The client submitted a completed parole plan to the IPR: Date 4/12/97YES ☒ NO ☐4. The IPR sent the parole plan for a field investigation: Date 4/12/97YES ☒ NO ☐

5. There were field investigation responses received for:

YES ☒ NO ☐

a) Residence

YES ☒ NO ☐


b) Employment/Education/Training

YES ☒ NO ☐6. Was a parole plan accepted as adequate by field staff: Date 5/19/97

DATE: April 10, 1997

SUBJECT: Reparole Violent Offender
Robert Defoy
Institution/PBPP Numbers: AK-1017/1226-J

TO: The Board

FROM: 
Frederick L. Cutler
Parole Agent II
SCI-Houtzdale

Board Action of 11/5/93 refers to Board Action of 11/10/92 to Recommit to a SCI as a CPV to serve 40 months backtime. Board Action recorded 11/23/93 corrected the Reparole date to 3/25/97. (To State Detainer Sentence).

The Board required No Misconducts during the service of backtime. Mr. Defoy incurred a Class I Misconduct 11/6/96 for Refusing To Obey AN Order and was sanctioned with 30 days cell restriction. He also incurred a Class I Misconduct on 4/24/94 for Violation of Visiting Regulations. A photograph showing him handling his visitor's breast was confiscated. The Misconduct was dismissed without prejudice.

It is this writers' understanding (from the SCI Houtzdale Records Office) that the subject may be granted a new trial on his detainer sentence. Furthermore, the District Attorney's Office has called the Records Office to set a Bail Hearing.

In view of the serious nature of his current offense, the serious detainer sentence (IDSI, Statutory Rape, CMM), the misconducts and the fact he may well be on the street shortly, the Board may wish to suspend Reparole and List for Reinterview.

Thank you!

FLC/re

Attachment: Misconducts #864054 and #566308

Copy: File

RECEIVED

APR 15 1997

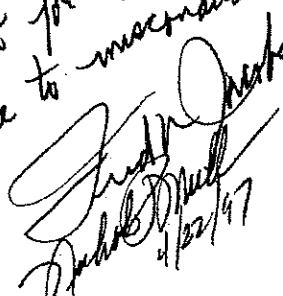
RECEIVED
APR 15 1997

4.23.97 Advised
Bot. action.

Thomas Janowski of
Carl Gilbert 4.22.97

PETITIONER'S
EXHIBIT

C

4/18/97
Modify B.A. of
11/23/93 by
temporarily removing
the repeat portion
list for reinterview
due to misconducts

4/22/97